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COUNTY OF LOS ANGELES and SERGEANT TRAVIS KELLY
(Defendants is exempt from filing fees pursuant to Government Code § 6103)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA ASSIFF,

Case No.: 2:22-cv-05367 RGK(MAAx)

Plaintiffs,

V.

COUNTY OF LOS ANGELES;
SHERIFF DEPUTY BADGE
NUMBER 404532; And DOES 1
through 10,

**DEFENDANTS' MOTION IN
LIMINE NO. 7 TO PRECLUDE
EVIDENCE OF PLAINTIFF'S
ECONOMIC DAMAGES THAT ARE
NOT REASONABLE AND/OR
NECESSARY; MEMORANDUM OF
POINTS AND AUTHORITIES**

(Declaration Of Molshree Gupta, Esq. Filed Concurrently)

Action Filed: August 3, 2022
Pretrial Conference: July 10, 2023
Trial Date: July 25, 2023

Assigned to:
Hon. R. Gary Klausner, District Judge
Courtroom 850
All Discovery Matters Referred to:
Hon. Maria A. Audero, District Judge

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT defendants COUNTY OF LOS ANGELES and
3 SERGEANT TRAVIS KELLY (collectively “Defendants”) hereby move this Court for
4 an order in limine to preclude Plaintiff JOSHUA ASSIFF and his counsel from
5 introducing at trial any evidence, references to evidence, witness testimony, contentions,
6 or cross-examination relating to Plaintiffs economic damages that are not reasonable
7 and/or necessary. This Motion is made on the grounds that such evidence would be
8 highly prejudicial to Defendants if admitted into evidence at the time of trial.

9 Defendants further move this Court to instruct plaintiffs and their counsel and to
10 require them to advise all witnesses:

- 11 1. Not to attempt to convey to the jury, directly or indirectly, any of the facts
12 mentioned in this Motion without first obtaining permission of the Court outside the
13 presence and hearing of the jury;
- 14 2. Not to make any reference to the fact that this Motion has been filed; and
- 15 3. To warn and caution each of plaintiffs’ witnesses to strictly follow the same
16 instructions.

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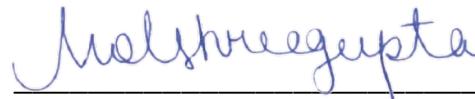
1 This motion is made following compliance with the meet and confer requirements
2 of Local Rule 7-3. This Motion is based upon the Memorandum of Points and
3 Authorities and Declaration of Molshree Gupta, served herewith, upon the pleadings and
4 papers on file herein, and upon such other and further oral argument and evidence as
5 may be presented at the hearing on this Motion.

6 Dated: June 9, 2023

7 KJAR, MCKENNA & STOCKALPER, LLP

8 Type text here

9 By:

10 
11 PATRICK E. STOCKALPER
12 MOLSHREE GUPTA
13 Attorneys for Defendants,
14 COUNTY OF LOS ANGELES and SERGEANT
15 TRAVIS KELLY

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION & ARGUMENT

This is a 42 U.S.C. §1983 alleged excessive force case arising out of a traffic stop and subsequent arrest of Plaintiff JOSHUA ASSIFF (“Plaintiff”) by Defendant SERGEANT TRAVIS KELLY (“Defendant Kelly”) on September 24, 2021, in the Santa Clarita Valley. Plaintiff alleges that Defendant Kelly pulled him over for no apparent reason; tasered, choked, pepper sprayed and beat him; and arrested him without probable cause, all in violation of his constitutional rights. Plaintiff claims that he has suffered economic damages and non-economic damages, including great bodily injury and severe emotional distress. [First Amended Complaint, Dckt. #27, ¶ 13.]

In the instant matter, Plaintiff's Initial Disclosure - Damages provide that the "reasonable value of the medical, psychological, hospital, nursing, and similar care and supplies that plaintiff reasonably needed and actually obtained, and the present value of such care and supplies that plaintiff is reasonably certain to need in the future... \$100,000.00," and "reasonable value of legal services that plaintiff reasonably needed and actually obtained to defend and clear himself... \$10,000." [Exhibit C, Plaintiff's Initial Disclosures – Damages, p. 2; Declaration of Molshree Gupta, *filed concurrently*, ¶6.] No supplemental disclosure has even been made. [Declaration of Molshree Gupta, *filed concurrently*, ¶6.]

Plaintiff's discovery responses and document production in this action only identify the following special damages:

Henry Mayo	\$9067.10
Bail bond	\$2500.00
Towing	\$267.00
SC EMER MED GRP	\$492.00
Payam Yermain Chiropractor	\$3880.00
Total	\$16,206.00

1 [Exhibit D, Plaintiff's Initial Disclosures – Documents, and Plaintiff's Document
2 Production 1-29 (redacted); Exhibit E, Plaintiff's Responses to Requests for Production
3 of Documents, Set 1, and Plaintiff's Document Production 32-39 (redacted); Declaration
4 of Molshree Gupta, *filed concurrently*, ¶¶7.]

5 Plaintiff's production of evidence amounts of special damages of \$16,206 only,
6 nowhere near the \$110,000 claimed in his disclosure of damages. [Declaration of
7 Molshree Gupta, *filed concurrently*, ¶¶ 6-8.] To date, Plaintiff has never provided any
8 documents pertaining to, or identified any treatment providers who gave, mental health
9 care to address his purported emotional distress. [Declaration of Molshree Gupta, *filed*
10 *concurrently*, ¶ 9.] It should also be noted that Plaintiff has not provided any evidence to
11 Defendants that the bills have been paid in full. [Declaration of Molshree Gupta, *filed*
12 *concurrently*, ¶ 10.]

13 By way of this Motion, Defendants seek to exclude any evidence of or testimony
14 regarding Plaintiff's economic damages that are not reasonable and/or necessary. In
15 particular, with regard to the total amount of her medical expenses regarding injuries
16 sustained in the subject incident, without first establishing (1) that total amount as being
17 reasonable and/or necessary and (2) that the total is for services that were all rendered on
18 account of injuries sustained during the subject incident.

19 **II. LEGAL AUTHORITY FOR MOTIONS IN LIMINE**

20 A motion in *limine* “is any motion, whether made before or during trial, to exclude
21 anticipated prejudicial evidence before the evidence is actually offered.” *Luce v. United*
22 *States* (1984) 469 U.S. 38, 40. Motions in *limine* are well recognized in practice and by
23 case law. See *Ohler v. United States* (2000) 529 U.S. 753, 758; *United States v. Cook*
24 (9th Cir. 1979) 608 F.2d 1175, 1186.

25 The purpose is to avoid the futile attempt of “unring[ing] the bell” when jurors
26 have seen or heard inadmissible evidence, even when stricken from the record. See
27 *Brodit v. Cambra* (9th Cir.2003) 350 F.3d 985, 1004-05 (citing *Kelly v. New West Fed.*
28 *Sav.* (1996) 49 Cal. App. 4th 659, 669). Motions in limine also serve to streamline trials,

1 by settling evidentiary disputes in advance. See *U.S. v. Tokash* (7th Cir. 2002) 282 F.3d
2 962, 968.

3 **III. ECONOMIC DAMAGES WHICH CANNOT BE ESTABLISHED AS**
4 **REASONABLE AND NECESSARY MUST BE EXCLUDED**

5 *Federal Rules of Evidence* Rule 403 authorizes the exclusion of relevant evidence
6 when its "probative value is substantially outweighed by the danger of **unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time**, or needless presentation of cumulative evidence." See Fed. R. Ev., Rule
7 403; see also *Old Chief v. United States* (1997) 519 U.S. 172, 180 (emphasis added). In
8 *Liew v. Official Receiver and Liquidator* (9th Cir. 1982) 685 F. 2d 1192, the Ninth
9 Circuit held that trial courts have, "very broad discretion in applying Rule 403 and
10 absent abuse, the exercise of its discretion will not be disturbed on appeal."

11 Under Rule 403, unfair prejudice is "an undue tendency to suggest decision on an
12 improper basis." *U.S. v. Lyons* (9th Cir. 2006) 472 F.3d 1055, 1066. For the reasons
13 that follow, allowing any reference to, comment upon, or attempt to introduce any
14 testimony or other evidence concerning Plaintiffs alleged economic damages that are not
15 reasonable and/or necessary would result in unfair prejudice to the defendants.

16 Here, Defendants contend that the total charges for Plaintiff's medical bills are not
17 evidence of the reasonable value of the services provided to Plaintiff. A plaintiff may
18 recover as damages for past medical expenses no more than the reasonable value of the
19 services provided. *Howell v. Hamilton Meats & Provisions, Inc.* (Cal. 2011) 52 Cal. 4th
20 541, 555. Such damages are **limited to the lesser of (1) the amount paid or incurred for past medical services, and (2) the reasonable value of the services.** *Id.* at 556. The
21 Court in Howell held that an injured plaintiff whose medical expenses are paid by private
22 insurance can recover damages for past medical expenses in an amount no greater than the
23 amount that the plaintiffs medical providers, pursuant to prior agreement, accepted as full
24 payment for the services. *Id.* at 566. The Court stated that there can be significant disparities
25 between the amounts charged by medical providers and the costs of providing services, the
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1 price of a particular service can "vary tremendously ... from hospital to hospital in
2 California" (*Id.* at 561), and "a medical care provider's billed price for particular services is
3 not necessarily representative of either the cost of providing those services or their
4 market value." *Id.* at 560-562, 564.

5 The Court in *Ochoa v. Dorado* (Cal. Ct. App. 2014) 228 Cal. App.4th 120
6 expanded on the *Howell* ruling and held that **unpaid medical bills are not evidence of**
7 **the reasonable value of the services provided and cannot support an award of**
8 **damages for past medical expenses.** The *Ochoa* ruling made clear that its holding was
9 not limited to the circumstance where the medical providers had previously agreed to
10 accept a lesser amount as full payment for the services provided but also applied to
11 circumstances [such as the instant case] where no such prior agreement existed. As noted
12 by the Court, "the full amount billed by medical providers is not an accurate measure of
13 the value of medical services because many patients pay discounted rates, and standard
14 rates for a given service can vary tremendously, sometimes by a factor of five or more,
15 from hospital to hospital in California." *Id.* at 136.

16 Based on this line of authority, Defendants respectfully request that the totals of
17 Plaintiff's medical bills are meaningless in the absence that said bills have been paid and/or
18 represent the reasonable value of the services provided as they pertain to the subject
19 incident.

20 **IV. MEET AND CONFER**

21 On June 8, 2023, and on June 9, 2023, counsel for Defendants wrote to counsel for
22 Plaintiff to request to meet and conferred on the substance of this Motion in *Limine*.
23 Gupta Decl. ¶ 4. No agreement could be reached. Gupta Decl. ¶ 4.

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V. CONCLUSION

Based on the foregoing, defendants respectfully request the Court grant this Motion in *Limine*, and preclude plaintiffs and their counsel from introducing at trial any evidence, references to evidence, witness testimony, contentions, or cross examination relating to Plaintiffs economic damages that are not reasonable and/or necessary.

Dated: June 9, 2023

KJAR, MCKENNA & STOCKALPER, LLP

By:

PATRICK E. STOCKALPER

MOLSHREE GUPTA

Attorneys for Defendants,

COUNTY OF LOS ANGELES and SERGEANT
TRAVIS KELLY

CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245.

On June 9, 2023, I served the foregoing document described as **DEFENDANTS' MOTION IN LIMINE NO. 7 TO PRECLUDE EVIDENCE OF PLAINTIFF'S ECONOMIC DAMAGES THAT ARE NOT REASONABLE AND/OR NECESSARY; MEMORANDUM OF POINTS AND AUTHORITIES** on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

By Mail I caused such envelope(s) to be deposited in the mail at El Segundo, California. The envelope was mailed with postage thereon fully prepaid and addressed to the parties listed on the Service List. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

XX By Email Based upon a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in the Service List. My email address is mnixon@kmslegal.com.

By Personal Service I caused such document to be Personally Served on the parties listed in the Service List.

XX State I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

Executed on June 9, 2023, at El Segundo, California.

Maria Nixon

SERVICE LIST

Assiff, Joshua vs. County of Los Angeles, et al.

Central District- Case No.: 2:22-cv-05367 RGK(MAAx)

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<p>Philip Cohen, Esq. Law Offices of Philip Kent Cohen, APC 100 Wilshire Boulevard, Suite 1300 Santa Monica, CA 90401 Telephone: 310/451-9111 Facsimile: 310/451-9119 EM: pcohen@pcohenlaw.com</p>	<p>Co-Attorney for Plaintiff. JOSHUA ASSIFF</p>